



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/108,189	07/01/98	TANNER	H 23660-00611

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QM12/0912

EXAMINER

THISSELL, J

ART UNIT

PAPER NUMBER

3763

DATE MAILED:

09/12/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/108,189

Applicant(s)

Tanner et al.

Examiner

Jeremy Thissell

Group Art Unit

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☒ Responsive to communication(s) filed on Jun 20, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 82, 85-87, 96, and 97 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 82, 85-87, 96, and 97 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Drawings

The examiner acknowledges applicant's explanation of the illegibility of reference character "931" and can see how it was intended to be a "2", this will be cleared up when formal drawings are submitted with more clear figures and numbering. However, there was no proposed drawing correction accompanying the amendment as applicant's attorney indicated. Therefore, the drawings are still objected to as per the form PTO-948 Notice of Draftsperson's Patent Drawing Review.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 97 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 97 recites that the "the filling passageway extends along said passageway". The examiner understands that "said passageway" is referring to the "passageway that accommodates the passage of the surgical components" in claim 82. However, the claim is very confusing as it is now, and perhaps applicant should add in the descriptive functional language "that accommodates the passage of the surgical components" (from claim 82) into claim 97 after the last recitation of

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“passageway”, so as to distinguish that there are 2 passageways and that they run along side one another.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 82, 85-87, 96 and 97 are rejected under 35 U.S.C. 102(e) as being anticipated by Hermann et al (US Pat No. 5,599,305).

Hermann teaches a introducer sheath having a positioning balloon 78 (see figure 6), and a sealing material 38 (see figure 8) in the sheath for surrounding and sealing the passage around surgical instruments introduced through the sheath. Hermann distinctly shows in figure 3 and teaches in col. 10, lines 4-9) that the sealing material does not readily form a passage when it is inserted in the housing (normal arrangement during use). Figure 4 is merely a drawing of the material if it were not inside the device. Hermann also teaches inflation lumens 80/82 (running along the instrument passageway) for the balloon(s).

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6. Applicant's arguments filed 20 June 2000 have been fully considered but they are not persuasive.

As discussed supra, Hermann does teach that the sealing material does not readily form a passageway.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Contacts

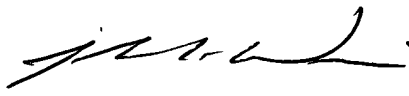
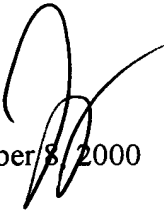
Any inquiry concerning this communication should be directed to Jeremy Thissell at (703) 305-5261, or to Primary Patent Examiner Sharon Kennedy (703) 305-0154.

Jeremy Thissell

Patent Examiner

JT

September 8, 2000



John G. Weiss
Supervisory Patent Examiner
Group 3700